

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

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Davis

76-2142
MAR 14 1977

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

76-2142

JAMES WILLIAM ALLEN,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

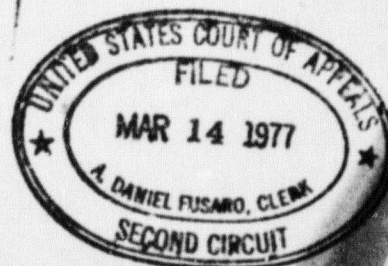
No. 76 - 2142

On Appeal from the United States District Court
for the Northern District of New York

TRAVERSE OF BRIEF SUBMITTED BY APPEALEE:

JAMES WILLIAM ALLEN;
APPELLANT-PETITIONER
EX PARTE - PRO SE
P.O. BOX 1000 - 71027
LEAVENWORTH, KANSAS
66048

No Oral Argument



APPELLANTS TRAVERSE

STATEMENT OF THE CASE ON APPEAL

THE TRIAL COURT IMPOSED A TWENTY YEAR SENTENCE UNDER THE PROVISIONS OF 18 U.S.C. 4208 (A) (2) AND THE TRIAL COURT TRIED TO PASS RESPONSIBILITY OF RELEASE UNDER 18 U.S.C. 4208 (A) (2) AT A REASONABLE, TIMELY POINT OF SERVICE OF SAID SENTENCE SOLELY UPON THE UNITED STATES PAROLE COMMISSION.

The Petitioner/Appellant, has met and exceeded the "Criteria?" of the United States Parole Commission, and in Sterer typed language with no Lawful sensible meaning the Parole Commission continues to deny parole consideration to the Appellant.

Petitioner/Appellant, applied for relief to the trial Court, Trial Court accepted jurisdiction, because as a matter of fact and law, Trial Court does retain jurisdiction in all matters of sentence, review and appeal.

Trial Court denied relief, in foreign language - after imposing a sentence under 18 U.S.C. 4208 (A) (2). How can the Court in good faith, and all honesty, deny the reason for use of 18 U.S.C. 4208 (A) (2) was to convey the benefit of the meaning and purpose of the statute to the Appellant/Petitioner by and through the United States Parole Commission. Who in complete indifference has denied and abused the "due process clauses and rights of the Appellant/Petitioner to the point there answer and reasons have become a static record, ridiculous and the ~~trial~~ trial Court has joined to conspire in the farce.

:ARGUMENT:

The sentencing Court does and always will have "first Jurisdiction and the Last", When the sentence imposed by said Court is in question, as is this case.

The trial Court did accept jurisdiction and deny Appellant/Petitioner, therefore it is the Law ful duty of the Honorable Court of Appeals, Second Circuit to review the erronious decesion of the trial Court:

The Learned United States Attorneys cite Braden v. 30th Judicial Circuit Court of Kentucky: 410 U.S. 484. Upon review of this case cited, Bradin is not conclusive and out of context with the issue before the Court.

Jurisdiction has been established by the review and ruling of the Honorable Trial Court; the issue now before the Court is the unwarranted denial of Earned release by the Appellant/Petitioner under 18 U.S.C. 4208 (A) (2)

The "Intent" of the sentencing Judge is in fact an issue and the Petitioner/Appellant, questions this "Intend" as it was in the mind of the Judge at the time of sentencing and as it is now that the Petitioner/Appellant has been refused and denied the benegit of 18 U.S.C. 4208 (A) (2) in what has become a conspiracy to deny Appellant/Petitioner "Due Process" and consideration for parole he has "Earned" under the meaningful application of 18 U.S.C. 4208 (A) (2).

If the trial -Court did not "intend" the Petitioner/Appellant to be released at a reasonable/early date prior to one third service of the sentence imposed, why use 18 U.S.C. 4208 (A) (2) in sentencing. We must assume it was not the "intention of Congress" when 18 U.S.C. 4208 (A) (2) was made available and

effective this statute was enacted for the purpose of "harrassment and punishment and denial of due process clauses, as has been done to the appellant/Petitioner by the United States Parole Commissioners and now the trial Court who imposed the sentence and hope upon the Appellant/Petitioner, only to deny release or even "Meaningful Consideration" to the point it has become mental anguish and punishment - "Cruel and Unusual" in its application to the Petitioner/Appellant.

Four times Appellant/Petitioner has been lured before the parole board filled by the hope of 18 U.S.C. 4208 (A) (2) in effect. Only to be denied though - (See - Exhibit -A- Attached.)

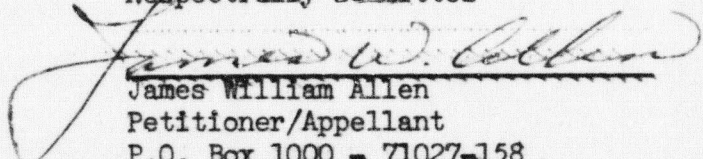
Appellant/Petitioner has "Earned" release on parole under 18 U.S.C. 4208 (A) (2) in the very words of the Parole Commission and the meaningful use and application of 18 U.S.C. 4208 (A) (2) which we must again assume was the original intent of the Honorable Judge at the imposition of sentence we must assume again, the purpose and intent of the Judge and 18 U.S.C. 4208 (A) (2) has been misused, misdirected and served only to punish, harrass and deny the Appellant/Petitioner.

CONCLUSION/PRAYER

In conclusion the Appellant/Petitioner submits the foregoing traverse to the Brief filed by Counsel for the Appellee, the brief summation is misleading and frivolous and out of context with the issue before the Court, said issue being the indifferent treatment and denial of the benefits and intentions of the sentence originally imposed upon the Petitioner/Appellant by the Court, under 18 U.S.C. 4208 (A) (2).

Therefore the Petitioner/Appellant prays this Honorable Court of Appeals will reverse and remand and further order the Court and the United States Parole Commission to cease the cruel and unusual Mental punishment and harrassment of the Petitioner/Appellant, and Release the Petitioner/Appellant on Parole as is his right under 18 U.S.C. 4208 (A) (2) or modify and correct the original misleading sentence of the Petitioner/Appellant as is appropriate.

Respectfully Submitted


James William Allen
Petitioner/Appellant
P.O. Box 1000 - 71027-158
Leavenworth, Kansas 66048

Subscribed and sworn to before me, this 9th day of March 1977

 Notary Public.

My Commission Expires August 5 1980.

CERTIFICATE OF SERVICE

I hereby Certify that I have mailed for service, Postage prepaid
one copy of the foregoing Traverse To Appellee's Brief, this 10
day of March 1977.

To: Glenda G. Gordon
Attorney, Department of Justice
Washington, D.C. 20530

Dated: March 10, 1977

James William Allen - Pro Se
Box No. 1000 - 71027-158
Leavenworth, Kansas 66048

UNITED STATES BOARD OF PAROLE
HEARING SUMMARY

Name ALLEN, James William Reg. No. 71027-152 Institution LEAVENWORTH, KANSAS

Member (or Examiner) Wright/Sartorius Hearing Date 6-14-76

Type of hearing One-Third

Conducted by: Personal Appearance

Projected MR Date: 7-12-82 Full Term Date: 11-10-89

PREVIOUS BOARD ACTION: Initial consideration in this case was in May 1971 and resulted in the decision of continue with a review hearing in May 1974. At the time of the review hearing in May 1974, the case was continued with a review hearing in May 1975, with the parole violator warrant being executed. Following the review in May 1975, the case was continued with a review hearing in April 1977 with an interim progress report at one-third of sentence. It does appear that the decision calling for the interim progress report was in error, as subject had had previous consideration, both an initial review as well as a follow-up review. Subject was advised that this decision was in error, but due to the fact the Board Order called for an interim progress report at one-third of sentence, the hearing was conducted.

Codefendant:

INSTITUTIONAL CONDUCT/PROGRAM ACHIEVEMENT/RELEASE PLAN: See institutional progress report dated May 12, 1976.

REPRESENTATIVE IDENTIFICATION & COMMENTS: Subject was represented at the hearing by Mr. Charles Huff, Vocational Training Instructor in the institution. Mr. Huff indicates that subject has done outstanding work in the air conditioning vocational training program, and because of his efforts, he has saved the institution considerable money. He indicates that subject has exceptional ability in this line of work and feels that he will be able to obtain employment quite handily in the outside world.

EVALUATION: As indicated under the "previous board action" section, this case did not qualify for the one-third consideration. However, on the basis of the Board Order calling for a progress report at one-third of the sentence, the hearing was conducted. Based on the questionable nature of this hearing, the panel felt that the previous decision should stand, although consideration is in order for a longer continuance.

TENTATIVE DECISION: Continue for institutional review hearing in April 1977.

"Exhibit A"

BEST COPY AVAILABLE

Received by me 6/11/76
BP-Class-3
(Rev. 11/74)

Date: May 12, 1976

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

USP, LEAVENWORTH
(INSTITUTION)

Inmate Reviewed and/or Received Copy

(SIGNATURE AND DATE)

“CENTRAL FILE”

JUNE 1976 PAROLE BOARD

PROGRESS REPORT

• IRH Interim Annual Other 1/3 Review

Name: ALLEN, James William Reg. No.: 71027-158

Offense: Bank Robbery, Conspiracy, NMVTA, PV :Age: 35

Sentence: 20 years Began: 08-31-70 Months Served: 68 + 293 Dys JT

Days EGT: 277 Days FGT -0- :Tentative Release: 07-12-82

Last Board Action and Date: 05-02-75, Continue with IRH 04-77 with review on
record at 1/3 of sentence.

Detainers: None

Codefendants: Sherwin L. Gibson, location unknown

NEW INFORMATION

No new information.

INSTITUTIONAL ADJUSTMENT

Allen has demonstrated a satisfactory adjustment in all areas of his confinement since his commitment to USP, Leavenworth on September 5, 1970. He has maintained a clear conduct record, having received no incident reports. He was assigned to the Brush Factory in April, 1971. He worked in the Brush Factory until April 23, 1975, when he was reassigned to the Climate Control Vocational Training program. He received excellent work reports while in the Brush Factory and earned the greatest amount available for his responsibilities.

“Exhibit A”

UNITED STATES PENITENTIARY
LEAVENWORTH, KANSAS 66048
Date: May 12, 1976

Page 2

NAME: ALLEN, James WilliamREG. NO. 71027-158

Allen was first assigned to the Climate Control Vocational Training program as a student. However, he has made a great deal of progress in that program and presently assists the instructor in training others. His supervisor within the vocational training program states that Allen accepts responsibility, and requires little direct supervision. According to his work supervisor, he would be capable of seeking employment in the climate control field. Allen receives meritorious good time and pay for his responsibilities within the vocational training program.

Allen has completed the Guides for Better Living course but has participated in no other programs. Allen states that he utilizes his spare time through studying climate control related material and regular movie attendance.

Allen maintains contact with the outside community through daily correspondence with friends and occasional telephone calls to family members. His last visit was from his former wife in 1972.

Allen appears to be in good physical and mental health and complains of no health problems at this time. It would not be anticipated that health problems would seriously restrict his future employability.

RELEASE PLANNING

Allen's release plans are not definite, but he tentatively plans to locate in Trenton, New Jersey. Allen has been in confinement for an extended period of time, therefore, release through a halfway house facility would be advisable to allow him a planned re-entry into the community.

- A. Residence: Initially Allen would reside in a contract facility in Trenton, New Jersey.
- B. Employer: Allen would seek employment in the field of climate control.
- C. Advisor: An advisor would be sought if so advised by the USPO.
- D. USPO: George J. Kramer, Supervising USPO, 314 U. S. Courthouse and Post Office Building, Trenton, New Jersey 08608.

"Exhibit A"